

David Lassner  
<david@hawaii.edu>  
08/21/2008 08:51 AM

To David Franzel <david@davidfranzel.com>, Jay April  
<jay@akaku.org>, keo@keoinc.org, gtakase3@hotmail.com,  
roy.amemiya@centralpacificbank.com,  
cc Hae Okimoto <hae@hawaii.edu>

bcc

Subject Re: HCR 358

I had previously shared these comments with David Franzel as he had requested. But since we seem to be comfortable using email to share views within the task force without concern for the Sunshine Law, here's what I sent David a few days ago.

Apologies to all, but I will be out of the country next week and will miss the meeting. Hae Okimoto will attend on behalf of UH.

david

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I. Solicit public input and examine methods other than the Public Procurement Code process to oversee PEG expenditures and ensure proper checks and balances; and

Given where we are today, there are two basic options, each of which have many variations:

A) Continue the roles of the current 4 PEG entities as-is; or  
B) Create an open and fair process other than the Public Procurement Code by which alternative organizations could be considered to become PEG entities in one or more counties for one or more of the P, E and/or G sectors.

If a decision is made to go with A, then there are a number of issues that should be addressed. This list might include such considerations as: obligations of the entities with respect to openness of records and meetings, financial and programmatic reporting requirements, ownership of assets purchased with PEG funding, commitments to community (P) producers, commitments to Educational (E) programming by accredited educational institutions, commitments to governmental (G) programming, expectations of providing training & education, selection of Board members, and contract termination. These issues could be addressed in Rules and enshrined in standard agreements between DCCA and the PEG entities.

If a decision is made to go with B then the same issues need to be addressed. The issues probably still need to be addressed in Rules, along with the selection process to be applied. The expectations for oversight could then be embodied in the call for proposals for entities interested in providing P, E and/or G services in one or more counties.

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II. The selection process for PEG Advisory Board Members

A reasonable interpretation of this phrase is that "PEG Advisory Board Members" refers to Members of the Boards of the PEG entities created as a result of the current franchises. Under that interpretation:

The crafters of the current process sought to ensure adequate oversight while still keeping the PEG entities at arms length from the State DCCA and Cable Company in order to minimize potential constraints on freedom of speech for community (P) producers. Any replacement process should strive to do the same for the Public (P) component of PEG Access.

General stakeholders in PEG include: the State (DCCA) as the Franchising Authority, the Cable Company as the provider of carriage, and cable subscribers who underwrite the cost of PEG and are the viewers. Specific stakeholders by PEG segment include community (P) Producers, accredited educational (E) programmers, and governmental (G) entities such as the Legislature, County Councils and Neighborhood Boards. In an ideal scenario, the Boards of the PEG entities would not be highly stratified with specific representatives of each stakeholder but would be composed of community members committed to: public service, responsible stewardship of PEG resources, appropriate Board-level oversight of a complex operational entity, and a shared vision with equal respect for all segments of P, E and G Access programming for which the entity is responsible.

Unfortunately, in the current contentious environment it is increasingly difficult to recruit and retain such Board members. The most interested parties are likely to be driven by their interest in some particular aspect of PEG rather than a holistic concern for the nuanced enterprise and its many distinct roles and stakeholders. So while there may be limited trust in the current appointment process, the more complex and onerous the selection process, the more difficult it may prove to recruit the best candidates for service.

Alternatively, should there be a process through which other organizations might propose to become P, E and/or G entities, it would be expected that the proposers' Board or other governance structures would be evaluated in the context of objectives similar to those noted above as desirable for PEG entities.

On Aug 21, 2008, at 8:38 AM, David Franzel wrote:

> Thank you for your comments.  
>  
> I also added Clyde Sonobe to your list as I did not see his name  
> above.  
>  
> Clyde, could you please post these comments?  
>  
> See you next week!  
>  
> David Franzel  
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> From: Jay April [mailto:jay@akaku.org]  
> Sent: Wednesday, August 20, 2008 5:00 PM  
> To: David Franzel  
> Cc: Jay April; keo@keoinc.org; gtakase3@hotmail.com;  
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> Subject: HCR 358

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> Aloha David,  
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>  
> These are the bullet points requested in your August 5 email to Task  
> Force members.  
>  
> Thanks. See you next week.  
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> Jay April  
> President and CEO  
> Akaku: Maui Community Television  
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> 1. Solicit public input and examine methods other than the Public  
> Procurement Code process to oversee PEG expenditures and ensure  
> proper checks and balances; and  
>  
> Since PEG Access Organizations in Hawaii were established by  
> statute for the narrow and specific purpose of providing community  
> television services, community building training and outreach in each  
> local franchise area and the state created these non-profit entities  
> to operate at arms length, there are in fact no other qualified  
> entities or prospective bidders. According to the law and to best  
> practice everywhere in the nation, these organizations are clearly  
> sole source entities and not subject to Procurement Code.  
>  
> With regard to oversight of PEG expenses and proper checks and  
> balances:  
>  
> Currently checks and balances and oversight of expenditures are  
> already in place with independent audits, DCCA audits and DCCA  
> Annual Reports  
> - Qualified Independent Community Access Policy Consultants/  
> Analysts\* could, if required based on a FINDING OF FACT be retained  
> by Legislature to:  
>                               Audit DCCA Cable Division  
>                               Audit Time Warner Cable franchise  
> compliance  
>                               Evaluate current PEG entities  
> according to established "best practice" criteria  
>                               Recommend improvements if needed  
>  
>  
> \*Historically DCCA Cable Division has retained the Seattle CPA  
> Accounting firm, Merina and Company to conduct inventories,  
> community ascertainties and "financial reports". Although this  
> company may have experience in financial matters, Merina and Company  
> has virtually no track record and is not recognized as experienced  
> or proficient in the area of PEG access operation and policy. Merina  
> and Company representatives, by their own admission at recent DCCA  
> sponsored cable TV franchise renewal proceedings in Oahu admitted as  
> much by professing the fact that no one from their firm had attended  
> the recent Alliance for Community Television National Conference  
> held in Washington D.C this past July. This is the country's  
> premiere cable access industry trade conference and exhibition  
> attended by virtually all leading community television consultants  
> working in the field today.  
>  
>  
> Contested case process is currently the most viable process for

> PEG Access designation  
> - Consistent with other related procedures of Chapter 440G  
> - Public is familiar with the process of a contested case  
> - Provides maximum public and regulatory oversight in an orderly  
> manner  
> - Balances flexible regulation with notice to the public  
> - Contours of process well-litigated avoiding need to "reinvent  
> wheel"  
>  
> -  
> 2. The selection process for PEG Advisory Board Members.  
>  
>  
>  
> + There are three possible interpretations of the resolution  
> request for PEG advisory board  
>  
> 1. examine the selection of the cable advisory  
> committee members (position one)  
> - CAC members were to have advisory role in PEG  
> designation per SB 1789  
> + 2. examine policy changes to the designation of access  
> organizations (position two)  
> - Consistent with the rest of the language of the  
> resolution  
> + 3. examine policy changes to the nonprofit corporation  
> act regarding election of directors of nonprofit corporate boards  
> (position three)  
> - Unlikely because it would require Task Force to  
> analyze non-profit statute  
>  
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>

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"David Franzel"  
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08/21/2008 08:44 AM

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cc <Laureen.K.Wong@dcca.hawaii.gov>,  
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Subject RE: HCR 358 David Lassner Comments for August 27, 2008 Meeting

All, see comments from David Lassner.

Clyde, could you please post these for us?

Thanks.

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From: David Lassner [mailto:david@hawaii.edu]  
Sent: Tuesday, August 19, 2008 9:17 PM  
To: David Franzel; Eric Knutzen; Clyde Sonobe  
Cc: David Lassner; Hae Okimoto  
Subject: Reflections on the Two Questions

Comments on the two questions.  
best, david

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**Sent:** Tuesday, August 19, 2008 9:59 AM

**To:** 'jay@akaku.org'; 'keo@keoinc.org'; 'gtakase3@hotmail.com'; 'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov'; 'shelley.pellegrino@co.maui.hi.us'; 'ghirata@honolulu.gov'; 'Geri\_Ann\_Hong@notes.k12.hi.us'; 'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'

**Cc:** 'Laureen.K.Wong@dcca.hawaii.gov'; 'Glen.WY.Chock@dcca.hawaii.gov'

**Subject:** RE: HCR 358 Draft Minutes - August 4, 2008 Meeting

Task Force Members,

Attached are the draft minutes from the August 4, 2008 meeting for your review in conjunction with the upcoming meeting.

David Franzel.

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**Sent:** Monday, August 18, 2008 10:24 AM  
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**Subject:** RE: HCR 358 Final Task Force Agenda

Task Force Members,

Attached is the Agenda for the upcoming meeting. The only comment I received from the Task Force was to add Room 120 as the Maui location.

CATV, I also provided that persons needing accommodation should contact you by August 25, 2008. Please revise the date if that does not work for you.

Please notify and post as appropriate.

The August 4, 2008 minutes will follow, shortly.

David Franzel.

**From:** David Franzel [mailto:davidfranzel@hawaii.rr.com]  
**Sent:** Tuesday, August 05, 2008 3:08 PM  
**To:** 'jay@akaku.org'; 'keo@keoinc.org'; 'gtakase3@hotmail.com'; 'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov'; 'shelley.pellegrino@co.maui.hi.us'; 'ghirata@honolulu.gov'; 'Geri\_Ann\_Hong@notes.k12.hi.us'; 'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'  
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The Agenda is identical to the draft we discussed at yesterday's meeting and includes the item on the Selection of PEG Advisory Board members that we discussed prior to the 4:00 pm termination of yesterday's teleconference.

So we can post the Agenda one (1) week before the next meeting, please provide David Franzel with any comments by August 15, 2008 so that they can be considered by the Chair.

In addition, as discussed, please submit your thoughts to David Franzel by August 20, 2008 (specifically in bullet form if possible) regarding the two (2) specific issues that the Resolution asks the Task Force to consider.

1. Solicit public input and examine methods other than the Public Procurement Code process to oversee PEG expenditures and ensure proper checks and balances; and
2. The selection process for PEG Advisory Board Members.

The Task Force written comments will be posted on the DCCA website prior to the August 27, 2008



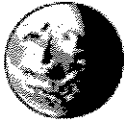
meeting and written on easel paper to assist your discussion (which is why the Chair and I suggest bullet points if at all possible; we want to be sure that we correctly memorialize Task Force comments for the discussion). Given our time demands, this pre-meeting work can provide more time for other meeting work and public comment thus ensuring the transparency that the Task Force desires.

Lastly, DCCA has checked with scheduling and determined that September 24, 2008 from 1:00 pm – 4:00 pm is available for the September meeting date. We can confirm this meeting date at the August 27, 2008 meeting.

We have also asked Clyde of DCCA to check on the Maui location given Jay's comments at yesterday's meeting.

Thanks.

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bcc

Subject RE: HCR 358 David Lassner Comments for August 27, 2008 Meeting

All, comments from Gregg Hirata.

Clyde, could you please post these?

Thanks!

David:

My thoughts regarding your message of Aug. 5:

Methods other than the procurement code, checks and balances, etc.

- a) Would like Task Force to see the books of all the PEG organizations to see revenues and expenditures, inventories, etc.
- b) Did State Procurement Office receive responses to its RFP? If so, does that mean there are nonprofits "out there" that could take over PEG?
- c) Would like to see AG opinions that PEG should be open to bid, as well as any legal opinions on whether the assets of the PEGS are public property.

PEG selection process:

Wouldn't this be in the by-laws of each PEG? Can't each PEG be requested to provide an organization chart or something similar, with officers, board members, and the like, with an explanation of how and why each board member was selected?

Gregg Hirata  
City and County of Honolulu

**From:** David Franzel [mailto:davidfranzel@hawaii.rr.com]

**Sent:** Thursday, August 21, 2008 8:43 AM

**To:** 'jay@akaku.org'; 'keo@keoinc.org'; 'gtakase3@hotmail.com'; 'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov'; 'shelley.pellegrino@co.maui.hi.us'; 'ghirata@honolulu.gov'; 'Geri\_Ann\_Hong@notes.k12.hi.us'; 'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'

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President and CEO

Akaku: Maui Community Television

1. Solicit public input and examine methods other than the Public Procurement Code process to oversee PEG expenditures and ensure proper checks and balances; and

Since PEG Access Organizations in Hawaii were established by statute for the narrow and specific purpose of providing community television services, community building training and outreach in each local franchise area and the state created these non-profit entities to operate at arms length, there are in fact no other qualified entities or prospective bidders. According to the law and to best practice everywhere in the nation, these organizations are clearly sole source entities and not subject to Procurement Code.

With regard to oversight of PEG expenses and proper checks and balances:

Currently checks and balances and oversight of expenditures are already in place with independent audits, DCCA audits and DCCA Annual Reports

- Qualified Independent Community Access Policy Consultants/Analysts\* could, if required based on a FINDING OF FACT be retained by Legislature to:

Audit DCCA Cable Division

Audit Time Warner Cable franchise compliance

Evaluate current PEG entities according to established "best practice" criteria

Recommend improvements if needed

\*Historically DCCA Cable Division has retained the Seattle CPA Accounting firm, Merina and Company to conduct inventories, community ascertainment and "financial reports". Although this company may have experience in financial matters, Merina and Company has virtually no track record and is not recognized as experienced or proficient in the area of PEG access operation and policy. Merina and Company representatives, by their own admission at recent DCCA sponsored cable TV franchise renewal proceedings in Oahu admitted as much by professing the fact that no one from their firm had attended the recent Alliance for Community Television National Conference held in Washington D.C this past July. This is the country's premiere cable access industry trade conference and exhibition attended by virtually all leading community television consultants working in the field today.

Contested case process is currently the most viable process for PEG Access designation

- Consistent with other related procedures of Chapter 440G
- Public is familiar with the process of a contested case
- Provides maximum public and regulatory oversight in an orderly manner
- Balances flexible regulation with notice to the public
- Contours of process well-litigated avoiding need to "reinvent wheel"

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2. The selection process for PEG Advisory Board Members.

+ There are three possible interpretations of the resolution request for PEG advisory board

1. examine the selection of the cable advisory committee members (position one)
  - CAC members were to have advisory role in PEG designation per SB 1789
- + 2. examine policy changes to the designation of access organizations (position two)
  - Consistent with the rest of the language of the resolution
- + 3. examine policy changes to the nonprofit corporation act regarding election of directors of nonprofit corporate boards (position three)
  - Unlikely because it would require Task Force to analyze non-profit statute